

JUST FOR THE RECORD

JUST AS THE INK HAD DRIED ON JONATHAN KAPLAN'S MARCH ARTICLE – *CONDITIONS APPLY – HE FOUND HIMSELF MEDIATING A SIMILAR DISPUTE.

THE brief facts of a recent mediation I undertook were simple on the surface. The owner of a cafe (I'll refer to him as Bill) was in arrears with his rent, which his former landlord was claiming from him.

Bill said that he had negotiated with a "friend" to purchase the business from him. Confirming the concerns highlighted by me in my March article, there was no paperwork to record the transaction, apparently for a purchase price in the vicinity of \$150,000. There also did not appear to be any agreement as to when the purchase price would be paid by the purchaser, nor any agreement on other matters usually covered when selling a business. Bill said that he had not sought legal advice on the sale because he could not afford it.

Bill had discussions with his landlord, who agreed to defer action for rent arrears until the transaction had been settled. In the meantime, the landlord prepared a Deed of Surrender of Lease for Bill to sign. Bill signed the deed and returned it to his landlord. He did not make it a condition that the deed was only effective on settlement of the transaction. The landlord then prepared a new lease for Bill's friend to sign, which he did.

In the meantime, Bill had allowed his friend into the premises. When Bill then requested that he pay the "agreed" purchase price, he refused on the basis that he was now the legal tenant and that there had been no formal agreement on the terms for the purchase of the business. Some friend!

So, in a nutshell, Bill was still indebted to the landlord for rent arrears and had "lost" his business by signing the deed of surrender, ultimately costing him in the vicinity of \$150,000. Now broke, litigation was out of the question for him.

I hope that this very recent and real experience hits home to those potential vendors who feel that they can do it all themselves. Against the possibility of a deal going pear-shaped and losing the opportunity of the sale of your business, it just isn't worth it.

Whilst still on the topic of selling a business, many months have passed since the change in government that everyone was waiting for to boost confidence in the economy. Judging from discussions with business brokers, although enquiries are at a higher level, it does not seem as if the confidence anticipated has converted to a high level of transactions. Over the last few months we have also seen a significant number of employees in various industries being made redundant. The extent to which those being made redundant will want to utilise their redundancy payouts to purchase hospitality businesses is an open question, but the possibility should not be discounted. In previous times those wishing to "buy a job" caused an increased level of activity in sales of hospitality businesses.

For this reason it is critical that



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those who are intending to put their businesses on the market in the future should be taking steps to ensure that they are able to provide the business agents engaged to sell their businesses with the best and most accurate information possible to present to potential purchasers.

As a minimum, a vendor should be able to provide audited financial records for the past three years and business activity statements together with proof of payment of GST. Purchasers will understandably become suspicious if the turnover can't be verified and they are expected to believe that some of the income is "off the books" and not reflected. Would you believe a vendor telling you that?

Be able to provide employee records, a typical roster, wage details and proof of wages as well as details of equipment leases and maintenance records. Invoices for the most recent three-month period should be available for review to verify purchases.

Usually a potential purchaser will require a copy of the lease and disclosure statement to verify the rights of occupancy and remainder of the term. There may also be a request to provide details of relevant permits, business names and licences that the business needs to operate.

Having this basic information available for a potential purchaser will certainly enhance the opportunity of selling a business above another vendor with vague, imprecise or inaccurate records. ■■■

Jonathan Kaplan is a commercial and hospitality lawyer and Accredited Specialist Mediator. Contact him on (03) 8686 9197 or 0418588855.